

**B. California Finance Lenders Law (Fin C §§22000–22780)****1. [§5.23] Statutory Coverage**

The California Finance Lenders Law applies to lenders who make consumer or commercial loans, whether unsecured or secured by real or personal property or both, to consumers for use primarily for personal, family, or household purposes. Fin C §22203. The provisions of Fin C §22203 authorize the taking of real property as security only when the bona fide principal amount of the loan is \$5000 or more. See Fin C §§22251(c), 22330. The statutes do not apply to

- Banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, or licensed pawnbrokers. Fin C §22050(a).
- Broker-dealers acting under a certificate issued pursuant to Corp C §25211. Fin C §22050(d).
- Colleges or universities that make loans to enable borrowers to pursue a course of study leading to a degree or certificate. Fin C §22050(c).
- Check casher holding a valid permit under CC §1789.37. Fin C §22050(b).
- Nonprofit agricultural cooperative associations. Fin C §22051(a).
- Loans of credit under certain credit card plans. Fin C §22052(a).
- Bona fide conditional sales contracts. Fin C §22054.
- Insurance premium financing as defined in Fin C §18563. Fin C §22055.
- Licensed real estate brokers. (A licensed real estate broker may make a loan secured by a lien on real property for sale to a consumer finance lender or arrange for such a loan to be made by a consumer finance lender without obtaining a consumer finance lender's license.) Fin C §22057.
- Licensed cemetery brokers. Fin C §22058.
- Licensed residential mortgage lenders or servicers when acting under the authority of that license. Fin C §22060.
- Nonprofit church extension funds. Fin C §22061.

Under Fin C §22250(b), loans of a bona fide principal amount of \$5000 or more are not subject to many of the statutory provisions. In addition, loans of a bona fide principal amount of \$10,000 or more are not subject to many of the statutory provisions. Fin C §22250(a).

A licensee may contract for and receive a delinquency fee of specified amounts as provided for in Fin C §22320.5.

## **2. [§5.24] Statutory Requirements**

Finance lenders and brokers must be licensed. Fin C §22100. In addition, they must

- Follow certain regulations in conducting their business. See Fin C §§22150–22167, 22300–22467.
- Deliver to the borrower or at the borrower's direction at the time a loan is made an amount equal to the loan's face value and the note evidencing the loan. Fin C §22309.
- Display prominently in their place of business a full and accurate schedule of the charges to be made and the method of computing the charges. Fin C §22325.
- Deliver to the borrower at the time a loan is made a statement clearly showing the lender's name, address, and license number; the date, amount, and maturity of the loan contract; how and when the loan is repayable; the nature of any security for the loan; and the agreed rate of charge or the annual percentage rate under Regulation Z. Fin C §§22337(a) (finance lenders), 22338(a) (brokers).
- Obtain from the borrower a signed statement about whether any person has performed any act as a broker in making the loan and of all sums paid or payable to the broker. Fin C §22337(b) (finance lenders).
- Permit payment on the loan in advance in any amount at any time. Fin C §22337(c) (finance lenders).
- Deliver to the borrower a receipt for each payment showing the total amount received and identifying the loan contract to which it was applied. Fin C §§22337(d) (finance lenders), 22338(c) (brokers).
- On repayment of a loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel and return any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower or optical image reproductions of such documents. Fin C §22337(e).
- Deliver to the borrower a statement showing the names, addresses, and license numbers of the consumer finance lender and the broker, if any. Fin C §§22337(f), 22338(e).

- When the charges are precomputed:
  - (1) Apply the charge to the monthly payment in the same ratio as the monthly payment bears to the total of the monthly payments. Fin C §22400(a)(1).
  - (2) Refund or credit to the borrower any unearned, precomputed charge on a loan prepaid in full by cash, a new loan, refinancing, or acceleration, which must be computed on an actuarial basis, *i.e.*, not by the “Rule of 78s.” Fin C §§22400(a)(2), (c), 22402.
  - (3) Recalculate the charge if the borrower prepays in full, at any one time, three or more, but not all, installments. Fin C §22400(a)(3).
  - (4) Disclose in the statement required to be given to the borrower by Fin C §24473 the principal amount of the loan exclusive of charges and the basis for computing the refund of unearned, precomputed charges and for computing default and deferment charges. Fin C §22400(b).
- File any action against a borrower on a loan made under Fin C §22341 in the county in which the borrower signed the loan, the county in which the borrower resided when the loan agreement was made, or the county in which the borrower resides when the action is commenced. Fin C §22341(c).
- Provide to a victim of “identity theft” who has filed a police report copies of application forms or other information about the unauthorized person. Fin C §22470(a).

### 3. [§5.25] Statutory Prohibitions

Finance lenders subject to the statutory coverage may not

- Advertise in a false, misleading, or deceptive manner; refer to state supervision of the business in advertising; advertise for a loan without stating the license under which the loan is arranged; or engage in other prohibited advertising. Fin C §§22161–22166.
- Charge, contract for, or receive any interest or charge unless a loan is made. Fin C §§22330, 22301(a).
- Charge, contract for, or receive charges on a loan exceeding that permitted by Fin C §§22303–22304, exclusive of statutorily specified amounts for an administrative fee (Fin C §22305), the cost of a lot book report purchased in lieu of title insurance (Fin C §22316), statutory fees paid to public officers (Fin C §22336), a fee for the return of a dishonored check (Fin C §22320), and an appraisal fee, an escrow fee, and a trustee fee on a loan secured by real property (Fin C §§22317–22319). Fin C §22306.

Under Fin C §22022(c), “charges” do not include court costs, excluding attorneys’ fees, incurred in a suit and recovered against a debtor who defaults on a loan. This means that the lender may recover court costs in an action against the borrower. “Charges” also do not include actual fees under §300 paid to a licensed repossession agency for repossession of a motor vehicle provided the lender has complied with the requirements of Fin C §§22328, 22329. These requirements are similar to those set forth in CC §§2983.2, 2983.3 under the Rees-Levering Motor Vehicle Sales and Finance Act (see §§5.34, 5.38).

- Make an “open end loan” to a borrower, except in compliance with the requirements of Fin C §§22450–22467.
- Compute charges, except as provided in Fin C §§22303 and 22304, but precomputed charges may be computed as provided in Fin C §22400(a).
- Pay, deduct, or receive charges in advance or compound them, except as provided in Fin C §22400 for precomputed charges and in Fin C §22305 for administrative fees. Fin C §22308. Unpaid interest that has accrued on a prior loan is exempt from this prohibition when part or all of the consideration for a new loan contract is the unpaid balance of the prior loan. Fin C §22309. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in Fin C §22400.
- Make a loan to refinance a retail installment contract subject to the Unruh Act that is held by the lender, or its subsidiaries or affiliates, unless certain conditions are met. Fin C §22341.
- Require the borrower to contract for, purchase, or agree to purchase any other thing in connection with the loan, or to enter into any collateral sales agreements or contracts other than as security for the loan, except insurance on real or personal property offered as security (Fin C §22313), or credit life insurance or credit disability insurance on the borrower (Fin C §§22314–22315). Fin C §§22311–22312. See discussion of “ancillary goods” in §5.22.
- Knowingly induce a borrower to split up or divide a loan with another lender, or induce or permit a borrower, including husband and wife, to become obligated under more than one loan to the same lender for the purpose or with the result of obtaining unlawful charges except as otherwise required by federal law. Fin C §22327.
- Take a deed of trust, mortgage, or lien on real property as security on a loan of less than \$5000, except a lien created by law on recording an abstract of judgment. Fin C §22330.

- Take a confession of judgment or a power of attorney, except a power of attorney taken to effect the transfer of ownership of a motor vehicle or mobilehome at the time the loan is made. Fin C §22331.
- Take any instrument in which blanks are left to be filled in after execution. Fin C §22333.
- Enter into a contract for a loan that provides for repayment over more than specified maximum terms. Fin C §22334. This provision does not apply to loans of a bona fide principal amount of \$5000 or more.

#### **4. [§5.26] Penalties**

If a lender charges, contracts for, or receives any amount exceeding the charges permitted by these statutes or violates any other statutory provision of Fin C §§22000–22780, the contract of loan is void and no person may collect or receive any principal, charges, or recompense in connection with the transaction (see Fin C §22750) unless the lender

- Shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adapted to avoid the error (Fin C §22751(b)), and
- Notifies the borrower of the error and makes whatever adjustments in the account that are necessary to correct the error within 60 days of discovering the error for computational error (Fin C §22751(b)) and 30 days for other unintentional error (Fin C §22752(b)). No provision imposing liability under these statutes, including Fin C §§22751(a) and 22752(a), applies to any act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the commissioner, notwithstanding that after the act or omission has occurred, the written general rule, regulation, or specific ruling is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Fin C §22754.

### **V. FALSE AND DECEPTIVE PRACTICES**

#### **A. [§5.27] Consumer Legal Remedies Act (CC §§1750–1784); Transactions Covered**

The purpose of the Consumers Legal Remedies Act is to protect consumers against unfair and deceptive business practices. To achieve this purpose it should be given a liberal construction. CC §1760.

The Act applies to all agreements for the sale or lease of goods or